

PATENT
Expedited Procedure
Reinstatement of Appeal
Under 37 CFR 1.192

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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ROLAND K. BOWLER II

In re application of)	
)	Atty. Docket No. 8313
MISZCZAK ET AL.)	
)	Examiner Thomas G. Dunn
Appl. No. 09/227,242)	
)	Art Unit 1725
Filed 8 January 1999)	
For: "Ultra Low Carbon Metal-Core Weld Wire")	

**TRANSMITTAL FOR REINSTATEMENT OF
APPEAL UNDER 37 CFR 1.192, 3RD REQUEST**

MISZCZAK ET AL.
"Ultra Low Carbon Metal-Core Weld Wire"
Atty Docket No. 8313

Response Under 37 CFR 1.192
Appl. No. 09/227,242
Examiner T. Dunn, Art Unit
1725

Assistant Commissioner for Patents
Washington D.C. 20231
SIR:

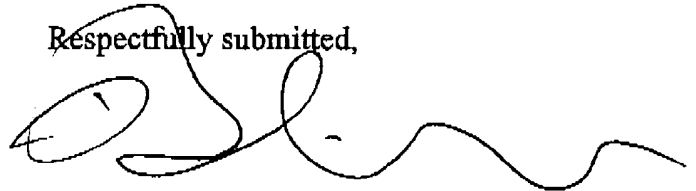
The following is enclosed in response to the non-final Official Action of 8
April 2003:

[X] 3RD Un-Answered Request for Reinstatement of Appeal Under 37
CFR 1.192 (5 pages).

AUTHORIZATION TO DEBIT DEPOSIT ACCOUNT

The Commissioner for Patents & Trademarks is hereby authorized to debit
any additional fees required under 37 C.F.R. 1.16 and 1.17 from, and to credit any excess
fees paid herewith to, Deposit Account No. 02-3290 of the undersigned in connection with
the papers presented herewith.

Respectfully submitted,



ROLAND K. BOWLER II 21 APRIL 2003
REG. No. 33,477

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REINSTATEMENT OF APPEAL
UNDER 37 CFR 1.192, 3RD REQUEST

Assistant Commissioner for Patents
Washington D.C. 20231

SIR

Request for Consideration

The 5th non-final Official Action of 8 April 2003 has been considered carefully.

The instant Office action of 8 April 2003 states no more substance than the previous two Office actions, fails to consider Applicants arguments traversing claim rejections, and does not materially advance prosecution of the instant application, as discussed more fully below.

Reconsideration of the application in view of the remarks below is respectfully requested.

MISZCZAK ET AL.
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Response To Examiners 'Response to Reconsideration'

The Examiner has reasserted the rejection of Claims 9-10, 12-13, 16, 23-24 and 26-27 under 35 U.S.C. 112, second paragraph, by re-alleging that it is unknown whether the "... combinations of Fe-Mn, Fe-Si, Fe-Ti and Fe-Mn-Si ... are merely combined or compounds."

In response to Applicants remarks concerning the subject rejection under 35 USC 112, second paragraph in the communication filed on 20 February 2003, the Examiner contends that the "... stoichiometry of [Fe-Mn, Fe-Si, Fe-Ti and Fe-Mn-Si] is not stated." Office action 8 April 2003.

Contrary to the Examiner's assertion, the stoichiometry for Fe-Mn, Fe-Si, Fe-Ti and Fe-Mn-Si is stated symbolically, as discussed in Applicants' previous communications. The Examiner has not responded substantively to applicants arguments in the Supplemental Appeal Brief of 19 November 2002 and in the communication filed on 20 February 2003 and earlier communications that the limitations in the claims at issue are drawn to compounds (rather than elements as interpreted by the Examiner) and that the claims are therefore not indefinite under 35 U.S.C. § 112, second para. The discussion is set forth more fully in the Supplemental Appeal Brief filed on 19 November 2002 responsive to the Official action of 3 October 2002, rejecting Claims 9-10, 12-13, 16, 23-24 and 26-27 under 35 U.S.C. 112, second paragraph on the same grounds asserted in the Official action of 14 January 2003.

The argument in Supplemental Appeal Brief filed on 19 November 2003 responsive to the Official action of 3 October 2002 is hereby maintained and reasserted in

MISZCZAK ET AL.
"Ultra Low Carbon Metal-Core Weld Wire"
Atty Docket No. 8313

Response Under 37 CFR 1.192
Appl. No. 09/227,242
Examiner T. Dunn, Art Unit
1725

response to the instant rejection of Claims 9-10, 12-13, 16, 23-24 and 26-27 under 35 U.S.C. § 112, 2nd paragraph.

The Applicants respectfully request that Claims 9-10, 12-13, 16, 23-24 and 26-27 be allowed in light of the discussion above and the assertions made in the Supplemental Appeal Brief filed on 19 November 2002 and in the prior communications. Alternatively, the Applicants hereby demand that the Examiner reinstate the appeal as requested in the Reinstatement of Appeal filed on 19 November 2002 (and in the Reinstatement Request filed on 20 February 2003) and answer the Supplemental Appeal Brief also filed on 19 November 2002 without further delay.

3rd Request for Reinstatement of Appeal

The Applicants hereby demand that the Examiner reinstate the appeal as requested in the Reinstatement of Appeal of 19 November 2002 and answer the Supplemental Appeal Brief also filed on 19 November 2002 without further delay if all pending Claims are not allowed.

The instant response incorporating the arguments of the Supplemental Appeal Brief and the request for Reinstatement of the Appeal filed on 19 November 2002 is fully responsive to the Official Action of 14 January 2003.

MISZCZAK ET AL.
"Ultra Low Carbon Metal-Core Weld Wire"
Atty Docket No. 8313

Response Under 37 CFR 1.192
Appl. No. 09/227,242
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1725

**Objection to Piecemeal Prosecution, Unreasonable
Delay, Lack of Responsiveness to Issues Raised by Applicants
Traversing Grounds for Rejection, Failure to Advance Prosecution &
Repeated Refusals to Re-Instate Appeal**

The Applicants hereby object to the Examiner's piecemeal prosecution of the instant patent application, which has been the subject of five (5) non-final Office Actions and three (3) final Office Actions, all of which are based upon the same primary prior art reference. The last four (4) Office Actions have been based upon the same prior art references.

The Applicants hereby object to the Examiner's systematic refusal to address issues raised by Applicants traversing the asserted grounds for rejection, including among other issues, the repeated refusal to substantively address the Applicants' contention that "Fe-Mn", "Fe-Si", "Fe-Ti" and "Fe-Mn-Si" are compounds, the repeated refusal to consider secondary considerations in the form of an affidavit and evidence supporting the non-obviousness of claims pending.

The Applicants hereby object to the Examiner's repeated refusal to re-instate the Appeal. This tactic has also unreasonably delayed prosecution of the application.

The Examiner's tactics have unreasonably delayed prosecution of the application, subjected Applicants to unreasonable prosecution costs, and denied Applicants a substantial portion of the patent term on allowed and allowable claims. The Applicants hereby notice the Examiner of intent to petition the Commissioner for a compensatory patent term extension on any allowed claims.

If the Examiner disagrees with the Applicants' positions, the Examiner

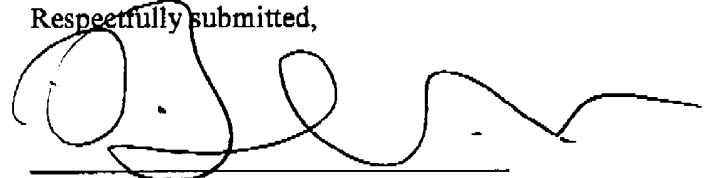
MISZCZAK ET AL.
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should answer the appeal brief; otherwise the claims should be allowed.

In view of the discussion above, it is submitted that all pending claims of the present application are now in condition for allowance. Kindly withdraw any rejections and objections thereto and allow the claims of the present application to issue as a United States Patent.

Respectfully submitted,



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